IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO.3779 of 2003.
IN
FIRST APPEAL ST.NO.35298 OF 2003.

Office notes, office memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Shri S.S.Vidyarthi for the Applicant.

Shri T.J.Mendon for Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 5th June, 2006.

P.C.:

1. Heard the learned Advocates appearing for the Applicant and the Respondent No.1. It is brought to my notice that leave under section 170 of the Motor Vehicles Act, 1988 was not granted in favour of the Applicant-Insurance Company. It is also apparent that the defence which is incorporated in sub-section (2) of section 149 of the said Act of 1988 was not raised by the Applicant. In view of the settled position of law, the Appeal itself is not maintainable at the instance of the Applicant-Insurance Company. Hence delay cannot be condoned in filing the Appeal which is not maintainable.

2. Shri Mendon appearing for the Respondent No.1 stated that the impugned award has already been executed and the original Claimant has received the entire amount of compensation.

3. Hence the Application is rejected. As a result of rejection of the Application for condonation of delay, the First Appeal does not survive. The Appellant will be entitled to the refund of Court fee as per the Rules. The Appellant is also entitled to withdraw the sum of Rs.25,000/- deposited in this Court in compliance with the requirement of section 173 of the said Act of 1988.

Judge.